

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
(Chapter VIII, Rule 32(2)(b))

Description of Case

Criminal Appeal No. 150 of 2007
(Old No. 1025 of 1983)

Date of decision : 4th September, 2007

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date: 04.09.2007

Initials of Judge

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the judge for signature

HIGH COURT OF UTTARAKHAND, AT NAINITAL

Criminal Appeal No. 150 of 2007

(Old No. 1025 of 1983)

Madan Ram
S/o Sri Vijay Ram
R/o Village Kholiya
Police Station Dharchula
District Pithoragarh

.....Appellant

Versus

State

.....Respondent

Mr. Lokendra Dobhal, advocate for the appellant.

Mr. Amit Bhatt, learned A.G.A. for the respondent-State.

**Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J. C. S. Rawat, J.**

Per Hon'ble J.C.S. Rawat, J.

This appeal has been directed against the judgment and order dated 24.03.1983, passed by Sri T.N. Saxena, the then Sessions Judge, Pithoragarh in Session Trial No. 1 of 1982, whereby the appellant has been convicted u/s 302 r/w 34 Indian Penal Code, 1860 (hereinafter as I.P.C.) and sentenced to undergo imprisonment for life.

2. The facts, in nutshell, are that informant Mohan Singh PW3 lodged an F.I.R. Ex.Ka.1 on 22.05.1981 alleging therein that on 21.05.1981 at about 8:30 p.m. accused Madan Ram and his associate Kalyan Ram came to the house of deceased Puran Singh, Pradhan. The accused called Puran Singh from outside the house and asked him to accompany them. The complainant Mohan Singh PW3 and his sister-in-law (bhabhi) were present in the house at that time. Thereafter, the deceased Puran Singh accompanied the accused persons and proceeded towards the Bazar side. On the next day, i.e. on 22.05.1981 Umed Singh, Peon of the Patwari Siroli told the

complainant Mohan Singh PW3 that dead body of his brother Puran Singh was lying in the gorge by the side of the road in village Satgarh. The complainant Mohan Singh PW3 reached at the spot and found his brother Puran Singh lying dead. On the basis of the F.I.R. Ex.Ka.1 chik report Ex.Ka.2 was prepared. Thereafter the revenue police transferred the matter to the regular police as the case fell within the jurisdiction of regular police. The investigation was taken up by Sri Nagendra Singh. The I.O. prepared the inquest report Ex.Ka.3, recovery memos of blood stained clothes and soil Ex.Ka.4 & Ex.Ka.5, site plan Ex.ka.8 and sent the dead body for post mortem examination vide letter Ex.ka.10 to the Medical Officer, Pithoragarh. He also recorded the statements of the witnesses u/s 161 Cr.P.C. Thereafter the investigation was entrusted to Laxman Singh Bisht PW9 on 25.07.1981. After completing the investigation, he submitted the chargesheet Ex.Ka.13 against the appellant before the court. It was further mentioned in the chargesheet that the other co-accused Kalyan Ram was not traceable. As such, he was shown as absconder in the chargesheet.

3. After submission of chargesheet, the accused/appellant was committed to the court of Sessions for trial and the trial court framed charges u/s 302/201 I.P.C. against the accused-appellant. The appellant-accused denied the charges levelled against him and claimed his trial.

4. The prosecution in support of its case examined as many as ten witnesses. Ram Singh PW1 is the witness who has a tailoring shop at Kanalichhina. Both the accused persons came to him shop and both of them consumed liquor and told

Ram Singh PW1 that they have some work with the deceased Puran Singh. In the meantime, Puran Singh also came there and after taking liquor all of them left his shop towards bazar side. Bhawan Singh PW2 is also witness whose house is situated at a distance of 100 meters from the house of the deceased puran Singh. The accused persons and the deceased Puran Singh came to his shop and consumed liquor in the night at about 9:00 p.m. on the date of the occurrence. Mohan Singh PW3 is the informant of the case. He is the real brother of the deceased Puran Singh. He has stated that the deceased, his wife and he were in the house of the deceased Puran Singh. At about 8:30 p.m. the accused/appellant and co-accused Kalyan Ram came to their house and took the deceased Puran Singh with them in the night of the occurrence. Chandra Shekhar PW4 is the Supervisor Kanoongo. Shanti Devi PW5, Tej Bahadur PW6 and Damroo Devi PW7 are the witnesses who have seen the accused Madan Ram and Kalyan Ram having quarrel with the deceased Puran Singh after consuming liquor at about 11:00 p.m. on the same night of occurrence. Radhapati PW8 is the Pradhan of Gram Sabha Satgarh. Laxman Singh PW9 is the investigating officer who has investigated the case and submitted the chargesheet Ex.Ka.13. Dr. H.K. Fuloria PW10 is the Medical Officer who conducted the post-mortem on the dead body of the deceased. It is also in the evidence that S.O. Nagendra Singh who investigated the case at the initial stage had died.

5. The accused-appellant was examined u/s 313 Cr.P.C. and he has pleaded not guilty to the offence. He has stated that he has been falsely implicated in this case.

6. The learned Sessions Judge on appreciation of the evidence held the accused-appellant guilty and convicted and sentenced him as mentioned above. The co-accused Kalyan Ram could not be tried, as he was not traceable.

7. We have heard learned counsel for the parties and perused the record.

8. At the outset, it needs to be mentioned here that it is not disputed that the deceased Puran Singh died on account of injuries sustained by him on the date of occurrence. Dr. H.K. Fuloria PW10, Medical Officer conducted the postmortem of deceased Puran Singh on 23.05.1981 at 9:00 a.m. and found the following ante mortem injuries on the person of the deceased:-

1. *Lacerated wound on the left side of scalp measuring 3.5 cm. x 3.5 cm. x bone deep circular in shape. 9 cm. front left ear. Skin in above area is absent and bones are open.*

2. *Lacerated wound on the left side of scalp left and .5 cm. from injury no. 1 measuring 3cm. x .5cm x bone deep. Semi circular in shape.*

3. *Contusion on right side of scalp, measuring 17 cm. x 9 cm. extending from 4 cm. above right eyebrow to injury no.1.*

4. *Contusion on right side of forehead measuring 5cm. x 3 cm.*

5. *Multiple small contusions on right side of face in an area of 10 cm. covered with black eye on right side.*

5. *Contusion on the left side of neck measuring 5 cm. x 3 cm.*

6. *Contusion on the right side of neck measuring 7 cm. x 4 cm.*

7. *Contusion in the front of neck just above skin measuring 8 cm. x 4 cm.*

8. *Contusion just above right knee measuring 7.5 cm. x 5 cm.*

9. *Contusion just above left knee measuring 8 cm. x 6 cm.*

10. *Contusion on the left leg measuring 12 cm. x 7 cm.*

11. *Contusion in the sacral region measuring 13 cm. x 12 cm. with lacerated wound in the contusion measuring 3.5 cm. x 3.5 cm. x .5 cm. circular in shape, skin in the area of laceration is absent.*

In the opinion of Medical Officer, the death of the deceased was caused due to shock and haemorrhage as a result of ante mortem injuries. The Medical Officer further stated that the duration of death was from one to two days. This, it is amply proved that the deceased died on account of the injuries sustained by him on the date of occurrence.

9. Now, we have to consider as to who is responsible for causing the death of the deceased Puran Singh. There was no eyewitness of the incident and the prosecution case rests upon circumstantial evidence. The law which is fairly settled about circumstantial evidence is that it should be such as to point out only to the guilt of the accused. The evidence should exclude all other hypothesis except the guilt of the accused. It is often said that though witnesses may lie, circumstances will not but at the same time it must cautiously be scrutinized to see that the incriminating circumstances are such as to lead only to a hypothesis of guilt and reasonably exclude every possibility of innocence of the accused. In order to sustain conviction on circumstantial evidence, each of the incriminating piece of circumstantial evidence should be proved by cogent and reliable evidence and the court should be satisfied that the piece of evidence taken together.

forge such a chain wherefrom no inference other than the guilt can be drawn

10. The Hon'ble Apex Court is **Sharad Birdhichand Sarda Vs. State of Maharashtra (AIR 1984 SC 1622)** while dealing with circumstantial evidence, has held that onus is always on the prosecution to prove that the chain is complete. The condition precedent before conviction could be based on circumstantial evidence were enumerated as under :-

- (i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;
- (ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- (iii) the circumstances should be of a conclusive nature and tendency;
- (iv) They should exclude every possible hypothesis except the one to be proved; and
- (v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

The above decision was also followed in the decisions of the Hon'ble Apex Court in **State of Rajasthan Vs. Rajaram**

2003 Cri.L.J.p/3901, State of U.P. Vs. Satish 2005 SCC (Cri) 642 and Ram Singh Vs. Sonia & others 2007 (3) SCC 1.

11. Keeping in view the above principle of law, we will consider the circumstances projected by the prosecution against the appellant.

12. This case rests on circumstantial evidence. The first circumstance that has been projected by the prosecution is that the accused/appellant Madan Ram alongwith co-accused Kalyan Ram came to the tailoring shop of Ram Singh PW1 at Kanalichhina. They took the liquor at his shop and they were telling that they had some work with the deceased Puran Singh, Gram Pradhan of Village Sirol. It is also in the evidence that the deceased Puran Singh suddenly appeared there and they took liquor together. Thereafter the deceased Puran Singh, the accused/appellant Madan Ram and co-accused Kalyan Singh went from his shop towards the bazaar. The prosecution has adduced the evidence of Ram Singh PW1 to prove the aforesaid circumstance. He has stated in his deposition that on 21.05.1981 at about 4:00 p.m., the accused/appellant and the co-accused Kalyan Ram came to his tailoring shop at Kanalichhina. He knew both the accused since long as they used to come to his shop before the incident regularly. He has further stated in his evidence that both the accused/appellant and co-accused Kalyan Ram consumed liquor in his shop. Meanwhile, the deceased Puran Singh also joined them in his shop and all the three took liquor in his shop in the evening on 21.05.1981 at about 4:30 p.m. Thereafter, they left the shop of Ram Singh PW1 and they went towards the market. The prosecution has also led

the evidence that on the next day, the deceased Puran Singh was found dead. It is apparent from the evidence of the prosecution that the accused/appellant and co-accused Kalyan Ram were in the company of the deceased Puran Singh. But it is the prosecution case that thereafter he went to his house from where the accused/appellant and the co-accused Kalyan Ram took him towards the bazaar in the night at about 8:30 p.m. on 21.05.1981. It is well settled position of law that last seen theory comes into play where the time gap between the point of time when the accused/appellant and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused/appellant being the author of the crime becomes impossible. The evidence of Ram Singh PW1 regarding last seen does not lead to take an inference that immediately after the departure from his shop, the murder of the deceased Puran Singh was committed. It is the prosecution case that the deceased Puran Singh went to his house and again the accused/appellant called him. Thus, this evidence is not helpful to the prosecution and it cannot be taken into account as last seen evidence in this case.

13. The next circumstance that has been projected by the prosecution is that the accused/appellant Madan Ram alongwith co-accused Kalyan Ram came to the house of the deceased Puran Singh on 21.05.1981 at about 8:30 p.m. and they took the deceased Puran Singh alongwith them towards the bazaar side. Thereafter, the deceased Puran Singh did not come back to his house. In the morning on 22.05.1981 Umed Singh, Peon of the Patwari Siroli informed Mohan Singh PW3 at his residence that the dead body of the deceased Puran Singh was lying in the 'Khud' by the side of the road in

village Satgarh. The prosecution has adduced the evidence of Mohan Singh PW3, real brother of the deceased Puran Singh to prove the aforesaid circumstance. He has stated in his evidence that the accused/appellant and co-accused Kalyan Ram called the deceased Puran Singh from his house and they took the deceased towards the bazar. Thereafter, the deceased did not return to the house. Mohan Singh PW3 had further deposed that on the next day, Umed Singh, Peon of the Patwari Siroli informed him that the dead body of the deceased Puran Singh was lying on the 'khud' by the side of the road in village Satgarh. Thereafter, he reported the matter to the revenue police and the revenue police found that the place of occurrence fell within the jurisdiction of regular police. Hence, they referred the matter to the regular police. This witness was cross examined at length but his testimony remained unshaken and consistent. The defence could not elicit anything in his evidence to discredit his testimony. Thus the evidence of Mohan Singh PW3 is credible and cogent.

14. The next circumstance that has been projected by the prosecution against the accused/appellant Madan Ram alongwith co-accused Kalyan Ram is that there was a tea stall of Bhawan Singh PW2 in the village Kanalichhina. The accused/appellant, co-accused kalyan Ram and the deceased Puran Singh came to the tea stall of Bhawan Singh PW2 at about 9:00 p.m. in the night and they consumed liquor in his stall. Thereafter, they were talking about each other that they would like to take the deceased Puran Singh in village Pukhtar where the relative of co-accused Kalyan Ram resided. Thereafter, they left his shop. The prosecution has adduced the evidence of Bhawan Singh PW2 to prove the

aforesaid circumstance. He has stated in his evidence that he had a tea stall in village Kanalichhina. The accused/appellant and co-accused Kalyan Ram came to his house and they took the liquor there. They came on his shop at about 9:00 p.m. in the night and they remained consuming liquor for about 45 minutes and thereafter they left the shop by saying that they are going to Pukhtar village where the relatives of the co-accused Kalyan Ram resides. Thereafter, they left his shop. This witness has categorically stated in his cross examination that he did not know the accused/appellant Madan Ram and the co-accused Kalyan Ram before the date of incident. The police arrested the accused/appellant after six months of the incident. The police personnel also said to him that he was telling that he alongwith his associate Kalyan Ram and deceased Pooran Singh had taken the liquor in the night of the occurrence. After the incident, the police came in his village and beat some shopkeepers to give their statements. When the accused/appellant Madan Ram and the co-accused Kalyan Ram had been arrested, then he came to know the names of the accused/appellant Madan Ram and the co-accused Kalyan Ram who consumed the liquor on the night of occurrence. The accused/appellant Madan Ram and the co-accused Kalyan Ram were not put to identification parade during investigation and thus this witness has not recognized them in identification parade. The trial court has rightly discarded the evidence of Bhawan Singh PW2 while convicting the accused/appellant.

15. The next circumstance that has been projected by the prosecution is the evidence of Shanti Devi PW5, Tej Bahadur PW6 and Damroo Devi PW7 that on 21.05.1981 at about 11:00 or 11.30 p.m., the accused/appellant, co-accused

Kalyan Ram and the deceased Puran Singh came to the house of Shanti Devi PW5, mauseri sister of the accused/appellant Madan Ram and co-accused Kalyan Ram. They stayed for a while in the house of Shanti Devi PW5 and they consumed liquor there. Thereafter, a quarrel took place in between co-accused Kalyan Ram and the deceased Puran Singh over the loan amount which was taken by co-accused Kalyan Ram from the deceased Puran Singh. Thereafter, the accused/appellant and the co-accused kalyan Ram became furious and the co-accused Kalyan Ram threw down the deceased Puran Singh and took him outside the house of Smt. Shanti Devi PW5. Thereafter, the accused/appellant and the co-accused Kalyan Ram took the deceased Puran Singh towards the workshop of Panna Ram by beating him. In the morning, the dead body of the deceased Puran Singh was recovered. The prosecution has adduced the evidence of Shanti Devi PW5, mauseri sister of the accused/appellant and the co-accused Kalyan Ram to prove the aforesaid circumstance. She has stated that the accused/appellant, co-accused Kalyan Ram and the deceased Puran Singh came to her house and took liquor there. Shanti Devi PW5 has state in her deposition that the accused/appellant, co-accused Kalyan Ram and the deceased Puran Singh came to her house at about 11:00 or 11:30 p.m. in the night and they consumed liquor in her house. The deceased Puran Singh was telling them that he had given loan of Rs. 800/- to co-accused Kalyan Ram whereas the co-accused Kalyan Ram was only admitting that he had taken an amount of Rs. 500/- only from him. The co-accused Kalyan Ram was ready to pay Rs. 500/- to the deceased Puran Singh. Thereafter, a quarrel took place in between the deceased Puran Singh and the accused and they became furious with each other. The

accused-appellant Madan Ram and the co-accused Kalyan Ram took the deceased Puran Singh out from the house of Shanti Devi PW5 and threw down on the ground. Thereafter, the accused/appellant and the co-accused took the deceased towards the workshop by beating him. Thereafter, they took the deceased towards the Satgarh. Shanti Devi PW5 came to know next day at about 10:30 a.m. that the deceased Puran Singh has been murdered. Thus this fact is amply proved by the evidence of Shanti Devi that the accused/appellant and the co-accused Kalyan Ram by beating the deceased Puran Singh took him towards Satgarh side. The trial court found the evidence of Shanti Devi PW5 to be implicitly truthful and reliable. Though her presence was tried to be shown as doubtful. We do not find any reason to accept the plea. The defence has cross examined the witness at length and also tried to show that she is not the mauseri sister of the accused/appellant and the co-accused Kalyan Ram. She has explained in her evidence as to how she was the mauseri sister of the accused/appellant and the co-accused Kalyan Ram. We are of the opinion that she is related to the accused/appellant and the co-accused Kalyan Ram and her testimony being a close relation of the accused/appellant and the co-accused Kalyan Ram cannot be disbelieved. The prosecution has also adduced the evidence of Tej Bahadur PW6 and Damroo Devi PW7 to corroborate the testimony of Shanti Devi. The houses of the accused/appellant and the co-accused Kalyan Ram were nearby the house of Shanti Devi PW5. The Investigating Officer has stated in his cross examination at para 12 that the statement of Tej Bhadur PW6 was recorded on 30.11.1981. It is evident that his statement was recorded after six months. Whereas the statements of the other witnesses were recorded within three

days of the incident. It is also pertinent to mention here that Mohan Singh PW3 has stated in his evidence that Tej Bahadur PW6 and Tek Bahadur were apprehended by the police in connection with this incident. If they were interrogated by the police, there was no question to record the statement of these witnesses after a lapse of six months. Damroo Devi PW7 has categorically stated that she saw the incident outside the house of Shanti Devi PW5 where a quarrel took place. But she did not know the accused/appellant Madan Ram since before and she could not recognize whether he was participating in the incident or not. The trial court has rightly not taken into consideration the evidence of Tej Bahadur PW6 and Damroo Devi PW7. We are completely in agreement with the findings recorded by the trial court. But the fact remained that the evidence of Mohan Singh PW3 and Shanti Devi PW5 is credible and cogent. The evidence concludes that the deceased was called by the accused/appellant and the co-accused Kalyan Ram at about 8:30 p.m. from his house on 21.05.1981. Thereafter, they consumed the liquor in the house of Shanti Devi PW5 in the night at about 11:30 p.m. and thereafter a quarrel took place in between them and the accused/appellant and the co-accused Kalyan Ram had beaten the deceased in front of the house of Shanti Devi PW5. Thereafter, the deceased was taken towards Satgarh by the accused/appellant and co-accused Kalyan Ram by beating him where his dead body was found in the next morning.

16. The next circumstances projected by the prosecution is that there was motive to commit the offence. The prosecution has led the evidence of Smt. Shanti Devi PW5 that the accused/appellant, co-accused Kalyan Ram and the

deceased Puran Singh came to her house at about 11:00 or 11:30 p.m. in the night and they consumed liquor in her house. During the course of consuming liquor, the deceased Puran Singh told the co-accused Kalyan Ram that he had given a loan of Rs. 800/- to him. Thereupon, the co-accused Kalyan Ram objected it and stated that he had only taken a loan of Rs. 500/- The co-accused Kalyan Ram was ready to pay Rs. 500/- to the deceased Puran Singh. During the conversation, quarrel took place in between the deceased Puran Singh and the accused and they became angry with the deceased Puran Singh. The accused/appellant and co-accused took the deceased out from the house of Shanti Devi and threw down on the ground. Thereafter, the accused/appellant and co-accused Kalyan Ram took the deceased towards Satgarh by beating him and thereafter the deceased Puran Singh was found dead in the morning in the gorge in village Satgarh. The prosecution has thus proved the motive for committing the murder of the deceased. It was further contended on behalf of the learned counsel for the appellant that this was a petty motive and no sensible person could have caused the death of the deceased on that pretext. In the case of **Baboolal Vs. State of U.P. 2001 SCC (Cri)1484**, the deceased was sitting inside the teashop of one Abdul Nabi. On the opposite side of road, there was a sweetmeat shop and all the accused were sitting inside it. As the radio was being played on a high pitch, an exchange of word took place between those who were sitting in the teashop and the accused. The accused threatened PW1 and others for raising this petty issue. A little later the deceased reached there and on coming to know of the development of the incident, he expressed his resentment at the incident reaching that range on such a petty issue. On this, The

accused moved forward with a pistol accompanied by the second accused and another person with daggers in their hands and fired upon the deceased. The Hon'ble Supreme Court had held as follows:-

*“8. Learned counsel rightly contended that on such a petty quarrel, no sensible person would have used such a lethal weapon and killed the victim. How the mind of an assailant reacted is not possible to be fathomed from a detached reflexion. As pointed out by this Court in **Nathuni Yadav v. State of Bihar 1998 SCC (Cri) 992:***

“Many a murders have been committed without any known or prominent motive. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailant.”

Assuming for the sake of argument that the prosecution has failed to prove the sufficient motive against the accused/appellant. When circumstance consistently supported the prosecution case, the question of motive would have lost its importance. It is well settled that in order to bring home the guilt of an accused, it is not necessary for the prosecution to prove the motive. The existence of motive is only one of the circumstances to be kept in mind while appreciating the evidence adduced by the prosecution. If the other circumstantial evidence appears to be truthful and establish the guilt of the accused, failure to prove the motive is not fatal to the case of the prosecution. The Apex Court is not fatal to the case of the prosecution. The Apex Court in the case of **Mani Kumar Thapa Vs. State of Sikkim** reported in **2002 SCC (Cri.) 1637** has held in para 4 as under:-

“4. Mr U.U. Lalit, learned counsel appearing for the appellant argued that in the absence of any motive and the corpus delicti, it is unsafe to place reliance on the

circumstantial evidence adduced by the prosecution; more so when the said evidence is replete with discrepancies, omissions and improvements. He pointed out that in regard to a part of the evidence of the prosecution, the courts below themselves have not placed reliance, therefore, in a case of circumstantial evidence of this nature, it would be dangerous to base a conviction. Similar fate will follow the argument that in the absence of any specific motive there can be no conviction. In the instant case, PW1, wife of the deceased, has spoken about some enmity between A-1 and the deceased. Assuming that this evidence is insufficient to establish the motive for murder even then if the prosecution is able to establish beyond all reasonable doubt from other circumstantial evidence that it is the accused (including the appellant) alone who could have committed the murder, the absence of the motive will not hamper a safe conviction. Having carefully considered the evidence led by the prosecution in regard to the above circumstances we are of the opinion that the courts below were justified in arriving at the finding that the appellant was guilty of the charge framed against him, and we find no reason whatsoever to disagree with this finding.”

The Hon'ble Apex Court in the case of **Sahadevan Vs. State represented by Inspector of Police, Chennai** reported in **(2003) 1 SCC 534** has held in para 24 as under:-

“24. It is then contended on behalf of the appellants that the police officers have no motive whatsoever to have committed the murder of Vadivelu and the prosecution case being one of circumstantial

evidence, the benefit of doubt should be given to the appellants. We do not think it is possible to accede to this request of the appellants either. This Court had held in the case of circumstantial evidence that if the circumstances relied upon by the prosecution are proved beyond doubt, then the absence of motive would not hamper a conviction. [See Mani Kumar Thapa (Supra)]”

17. As we have noticed above that the prosecution has established that the deceased was last seen in the company of the accused/appellant and co-accused Kalyan Ram on at about 11:00 or 11:30 p.m. on 21.05.1981. It is also established that quarrel took place in between accused persons and the deceased Puran Singh. The accused persons threw the deceased on the ground and thereafter they took him towards village Satgarh by beating him. This fact has been established by the evidence of Mohan Singh PW3 and Shanti Devi PW5. Thereafter, the deceased Puran Singh was never seen alive and his dead body was recovered in the morning of 22.05.1981. In the aforesaid circumstances, it was obligatory on the part of the accused/appellant to satisfy the court as to how and in what manner the deceased Puran Singh parted company with him. An explanation should have come from the side of the accused/appellant in this case. In the instant case, the entire evidence of last seen adduced by the prosecution was put to the accused/appellant under Section 313 Cr.P.C. and he had merely denied the evidence. The accused/appellant has failed to discharge his onus. In the statement recorded under Section 313 Cr.P.C. He has not taken any specific stand whatsoever. He has not given any explanation in this regard. On the contrary, the prosecution has been able to establish the fact that on the date of occurrence, i.e. 21.05.1981, the deceased Puran Singh was in the company of the accused/appellant. We have noticed that

the prosecution has established this fact by credible and cogent evidence. We are of the firm view that the prosecution has established that on the date of occurrence, i.e. 21.05.1981, the deceased Puran Singh was called from his house at about 8:30 p.m. and thereafter he was taken to the house of Shanti Devi PW5 where all of them consumed liquor. Thereafter, a quarrel took place in between them as narrated above. The deceased Puran Singh was taken out from the house of Shanti Devi PW5 where he was thrown down on the ground during the course of quarrel. The accused/appellant and co-accused became very furious and they took the deceased Puran Singh towards the workshop and later on towards the village Satgarh by beating him. Thereafter, the dead body of the deceased was found on the next day, 22.05.1981. Therefore, in absence of any specific explanation from the accused/appellant in this regard and in view of other incriminating circumstances against the accused/appellant having been proved by the prosecution, an adverse inference will have to be drawn against the accused/appellant as to his part in the missing of the deceased Puran Singh. The Hon'ble Apex Court has held in catena of decisions that if the prosecution establishes that the missing person was last seen in the company of the accused and was never seen thereafter then it is obligatory on the part of the accused to explain the circumstances in which the missing person and the accused parted company. The Hon'ble Apex Court in the case of **Joseph Versus State of Kerala (2000) 5 SCC p/197** has held as under:-

"14. The incriminating circumstances enumerated above unmistakably and inevitably lead to the guilt of the appellant and nothing has been highlighted or brought on record to make the facts proved or the

circumstances established to be in any manner in consonance with the innocence at any rate of the appellant. During the time of questioning under Section 313 CrPC, the appellant instead of making at least an attempt to explain or clarify the incriminating circumstances inculcating him, and connecting him with the crime by his adamant attitude of total denial of everything when those circumstances were brought to his notice by the Court not only lost the opportunity but stood self-condemned. Such incriminating links of facts could, if at all, have been only explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. Of late, courts have, from the falsity of the defence plea and false answers given to court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed....”

The Apex court in the case of **Mani Kumar (Supra)** has held in para 6 as under:-

“6..... If we analyse the prosecution evidence further it is seen that in regard to travelling in the jeep from where they picked up the deceased then on to Ramam Checkpost and back, we see the appellant has given 3 different versions on 3 different occasions. To PW5 he stated that while taking the deceased towards Singla from the checkpost, he allowed him to run away from the jeep after they crossed Ramam Checkpost when A-1 had got down for the jeep to ease himself. To PW 36 he told that when they were bringing a

smuggler from Darjeeling side to Ramam Checkpost i.e. from the opposite direction the smuggler escaped from the jeep and in the process of running he fell down and suffered fatal injuries. In his statement under Section 313 CrPC before the court, he stated that on 12-2-1988 he had gone to Soreng on the orders of his SP as the Chief minister was visiting Soreng and on the evening of that day as he did not have any vehicle, he took a "lift" in the vehicle of A-1 up to Jorethang from where he went to his quarters and accused 1 went to Naya Bazar Dak Bungalow as he was camping there on duty. These 3 different versions which are self-contradictory further show that the appellant has not been consistent in his stand as to what happened on 12-2-1988. This Court in the case of State Maharashtra v. Suresh, 2000 SCC (Cri) 263 has held that a false answer offered by the accused when his attention was drawn to any inculcating circumstance would render such circumstance as capable of inculcating him. The Court also held that in such a situation a false answer can also be counted as providing "a missing link" in completing the chain. If the said principle in law is to be accepted, the statement of the appellant made under Section 313 CrPC being palpably false and there being cogent evidence adduced by the prosecution to show that the appellant had given two other versions as to the incident of 12-2-1988, we will have to proceed on the basis that the appellant has not explained the inculcating circumstances established by the prosecution against him which would form an additional link in the chain of circumstances."

The Hon'ble Apex Court in the case of **Sahadevan (Supra)** has held in para 19 as under:-

“19. The last circumstance relied on by the courts below pertains to the stand taken by the appellants in the trial as to parting company with Vadivelu. Here we must notice that as discussed hereinabove, the prosecution has established the fact that Vadivelu was seen in the company of the appellants from the morning of 5-3-1985 till at least 5 p.m. on the same day, when he was brought to his house and thereafter his dead body was found in the morning of 6-3-1985. Therefore, it has become obligatory on the appellants to satisfy the court as to how, where and in what manner Vadivelu parted company with them. This is on the principle that a person who is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstances in which they parted company. In the instant case the appellants have failed to discharge this onus. In their statement under Section 313 CrPC they have not taken any specific stand whatsoever. In the evidence of PW 25, it is elicited that on 5-3-1985 in the afternoon when Vadivelu was produced before the said witness, he after interrogation allowed Vadivelu to go, but then it is found from his evidence that he instructed A-1 to keep a watch over Vadivelu. In such circumstances, it was incumbent upon A-1 to have explained to the court in what circumstances they parted company. He has not given any explanation in this regard. On the contrary, the prosecution has established the fact that on the very day at about 5 p.m., Vadivelu was brought to the house of PW 1 by the appellants which was seen by PW 5. This

part of the evidence of PW 5 has gone unchallenged in the cross-examination and, therefore, we will have to proceed on the basis that, what is stated by PW 5 in this regard is true. If that be so, the prosecution has established the fact that on 5-3-1985 at 5 p.m. Vadivelu was still in the company of these appellants and, therefore, in the absence of any specific explanation from the appellant in this regard, and in view of the other incriminating circumstances against the appellants having been proved by the prosecution, an adverse inference will have to be drawn against these appellants as to their part in the missing of Vadivelu. At this point, it may be relevant to note that though no specific stand has been taken by the appellants as to their parting company with Vadivelu, in their statement under Section 313 CrPC, it is seen from the evidence of PWs 1 and 5 that A-1 told the said witnesses on the night intervening between 5-3-1985 and 6-3-1985 that Vadivelu had escaped from the police station when he was allowed to sleep in the verandah of the police station. This explanation given by A-1 to PW1 which was also heard by PWs 5 and 14, clearly shows that the same is totally false and obviously was an excuse made by the appellants to conceal the true facts and, therefore, this circumstance of A-1 making a false statement to PW1 can also be taken as a circumstance against the appellants, in establishing the appellants' guilt. This Court in more than one case has held, that if the prosecution, based on reliable evidence, establishes that the missing person was last seen in the company of the accused and was never seen thereafter, it is obligatory on the accused to explain the circumstances in which

the missing person and the accused parted company. (See Joseph v. State of Kerala, 2000 SCC (Cri) 926) Therefore, we are in agreement with the finding of the courts below that circumstance 7 also stands established against the appellants."

18. Dr. H.K. Fuloria PW10 who conducted the post-mortem of the deceased Puran Singh has opined that the death of the deceased Puran Singh was caused on account of shock and haemorrhage due to ante mortem injuries (as mentioned in para 8) found on the person of the deceased Puran Singh. The doctor also opined that the ante mortem injuries, which were found on the person of the deceased, were possible by forcibly throwing the deceased on earth or by the marpeet or throwing from height in a gorge. He has further stated that the ante mortem injuries could have been caused in the night of 21/22.05.1981. Thus the medical evidence further corroborates the manner of the death of the deceased Puran Singh

19. In view of the aforesaid discussion, the circumstantial evidences as indicated above and as adduced by the prosecution are so complete and incapable of explanation of any other hypothesis other than that of the guilt of the accused/appellant. Thus, the prosecution has succeeded in proving the aforesaid circumstances beyond reasonable doubt. The learned trial court after considering the entire evidence on the subject was justified in concluding that the evidence of Ram Singh PW1 and Mohan Singh PW3 are credible and cogent. The learned Trial Court was also justified in holding that even if the testimony of Tej Bahadur PW6 and Damroo Devi PW7 are excluded even than the

testimony of Shanti Devi PW5 can be relied upon. The trial court also rightly came to the conclusion that the prosecution has proved its case beyond reasonable doubt against the accused-appellant.

20. Learned counsel for the appellant contended that the F.I.R. was ante-timed and ante-dated in this matter. He has further contended that neither the F.I.R. nor the inquest report contained the crime number of the commission of the offence nor it contains the details of the incident. Learned A.G.A. refuted the contention. Perusal of the F.I.R. clearly reveals that the F.I.R. contains the crime No. 1. whereas the inquest report is concerned, it has mentioned that date of the F.I.R., i.e. 22.05.1981. It has also been mentioned in the inquest report that Mohan Singh PW3 has informed about the incident and it also contains that the case u/s 364, 302 & 201 I.P.S. has been lodged in the police station. It is true that the inquest report does not contain the crime number. To mention the crime number in the inquest report is not the requirement of Section 174 Cr.P.C.. The Apex Court has held in **Radha Mohan Singh @ Lal Saheb Vs. State of U.P. 2006 (2) SCC 450:-**

“14 The language of the aforesaid statutory provision is plain and simple and there is no ambiguity therein. An investigation under Section 174 is limited in scope and is confined to the ascertainment of the apparent cause of death. It is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. It is for this limited purpose that persons acquainted with the

facts of the case are summoned and examined under Section 175. The details of the overt acts are not necessary to be recorded in the inquest report. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted or who are the witnesses of the assault is foreign to the ambit and scope of proceedings under Section 174. Neither in practice nor in law is it necessary for the person holding the inquest to mention all these details.

15. In *Pedda Narayana v. State of A.P.* 1975 SCC(Cri) 427 it was held that the proceedings under Section 174 have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so, what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under Section 174. Neither in practice, nor in law, was it necessary for the police to mention those details in the inquest report. It is, therefore, not necessary to enter all the details of the overt acts in the inquest report. Their omission is not sufficient to put the prosecution out of Court. In ***Shakila Khader v. Nausheer Cama* 1975 SCC (Cri) 379** the contention raised that non-mention of a person's name in the inquest report would show that he was not an eyewitness of the incident was repelled on the ground that an inquest under Section 174 CrPC is concerned with establishing the cause of death and only evidence

necessary to establish it need be brought out. The same view was taken in **Eqbal Baig v. State of A.P. 1986 SCC(Cri) 232** that the non-mention of name of an eyewitness in the inquest report could not be a ground to reject his testimony. Similarly, the absence of the name of the accused in the inquest report cannot lead to an inference that he was not present at the time of commission of the offence as the inquest report is not the statement of a person wherein all the names (the accused and also the eyewitnesses) ought to have been mentioned. The view taken in **Pedda Narayana v. State of A.P. 1975 SCC(Cri) 427** was approved by a three-judge Bench in **Khujji v. State of M.P. 1991 SCC (Cri)916** and it was held that the testimony of an eyewitness could not be discarded on the ground that their names did not figure in the inquest report prepared at the earliest point of time. The nature and purpose of inquest held under Section 174 CrPC was also explained in **Amar Singh v. Balwinder Singh 2003 SCC (Cri) 641**. In the said case the High Court had observed that the fact that the details about the occurrence were not mentioned in the inquest report showed that the investigating officer was not sure of the facts when the inquest report was prepared and the said feature of the case carried weight in favour of the accused. After noticing the language used in Section 174 CrPC and earlier decisions of this Court it was ruled that the High Court was clearly in error in observing as aforesaid or drawing any inference against the prosecution. Thus, it is well settled by a catena of decisions of this Court that the purpose of holding an inquest is very limited viz. to ascertain as to whether a person has committed suicide

*or has been killed by another or by an animal or by machinery or by an accident or has died under circumstances raising a reasonable suspicion that some other person has committed an offence. There is absolutely no requirement in law of mentioning the details of the FIR, names of the accused or the names of the eyewitnesses or the gist of their statements, nor is it required to be signed by any eyewitness. In **Meharaj Singh v. State of U.P. 1994 SCC (Cri) 1391** the language used by the legislature in Section 174 CrPC was not taken note of, nor the earlier decisions of this Court were referred to and some sweeping observations have been made which are not supported by the statutory provision. We are, therefore, of the opinion that the observations made in paras 11 and 12 of the reports do not represent the correct statement of law and they are hereby overruled. The challenge laid to the prosecution case by Shri Jain on the basis of the alleged infirmity or omission in the inquest report has, therefore, no substance and cannot be accepted."*

It is not necessary to enter all the details of the F.I.R. in the inquest report. Non-mention of crime number in the inquest report would not establish that the F.I.R. had not been lodged at the time of making the inquest. It is further revealed from the G.D. No. 8 that the case was registered in the revenue police. Thus, the contention raised by the learned counsel for the appellant has no force.

21. Learned counsel for the accused/appellant contended that Ram Singh PW1 has stated in his evidence that the accused/appellant, the co-accused Kalyan Ram and the

deceased Puran Singh took liquor in his shop. It was further contended that Bhawan Singh PW2 has also stated that they also consumed liquor in his shop at about 9:00 p.m. in the night. Shanti Devi PW5 has also stated that they consumed liquor together in her house and thereafter a quarrel took place in between the accused and the deceased Puran Singh. Learned counsel for the appellant further contended that even if the offence was committed by the accused/appellant, it was under the influence of intoxication, so the accused/appellant is entitled to get the benefit of Section 85 of I.P.C. Learned A.G.A refuted the contention. Section 85 of I.P.C. reads as follows:-

“Act of a person incapable of judgment by reason of intoxication caused against his will. - Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will.”

Thus, it is apparent from the perusal of the aforesaid provision that voluntarily drunkenness does not take away any responsibility for any crime. If a person takes drinks and kills another this will be an offence. If liquor was taken against the will of the accused and thereafter he committed the offence in that case Section 85 of I.P.C. will come into play. It is also pertinent to mention here that defence has not taken this plea in the trial court. The defence had not made any suggestion to any of the prosecution witnesses to that effect the appellant had consumed the liquor against his

will and knowledge. On the other hand, the counsel of the appellant had cross-examined the prosecution witnesses to that effect that they had not consumed the liquor at all. In view of the foregoing discussion, we are not able to accept the contention of the learned counsel for the appellant.

22. Learned counsel for the appellant further contended that the learned trial court has concluded that the accused/appellant was below 16 years at the time of the offence. Thus, he was a child within the meaning of Section 24 of U.P. Children Act, 1951, if it applies. Learned counsel for the appellant further contended that the provision of Sections 27 and 29 of U.P. Children Act, 1951 are applicable to district Pithoragarh and as such, he cannot be sentenced as awarded by the learned trial court. Learned A.G.A. refuted the contention Sections 1 to the U.P. Children Act, 1951 provides as under:-

“1. Short title, extent and commencement. –(1) This Act may be called the Uttar Pradesh Children Act, 1951.

(2) It extends to the whole of the Uttar Pradesh.

(3) This section and section 77 shall come into force at once.

(4) The State Government may, by notification in the official Gazette, direct that all or any of the remaining provisions of this Act shall come into force in any local area on such date or dates as may be specified in such notification.

(5) Notwithstanding the commencement of this Act in any local area, the State Government may by notification in the official Gazette exclude any class of

children or youthful offenders from the operations of all or any of the provisions of this Act.”

Perusal of the provision clearly reveals that the U.P. Children Act, 1951 was not applicable in whole of Uttar Pradesh. The Government was empowered to issue notifications for the application of all the provisions or any remaining provisions of the said Act in the official gazette in any local area of U.P. Pursuant to the above, the State Government did not notify for the application of the provisions of this Act to all the districts of U.P. The following districts were notified for the application of this Act.

Sl. No.	Section Enforced	Name of the Districts	Date and notification numbers
1	S. 34	Varanasi and Agra	W.e.f. 1.9.1956 Vide Notification No.720/VI-1043 (1) 55, dated 31.08.1956
2	All The provisions of this Act	Allahabad, Agra, Kanpur, Lucknow, Varanasi and Bareilly	W.e.f. 20.06.1962 Vide Notification No.627/(P XXXVI-S-W-576 (P 61, dated 20.06.1962
3	Chapter I and II	Almora, Dehradun, Etah, Etawah, Faizabad, Gorakhpur, Ghazipur, Jhansi, Mathura, Meerut, Mirzapur, Nainital, Saharanpur, Tehri, Garhwal, Unnao	W.e.f 20.06.1962 Vide Notification No.627/(p (iii), XXXVI-S-WP-576 (P) 61, dated 20.06.1962
4	Sections 2 to 76 and 78 and 88	Moradabad	W.e.f. 11.11.1967 Vide Notification No.4995/- XXXVI-S-W-32(P) 67, dated 30.10.1967
5	-do-	Hardoi and Shahjhanpur	W.e.f. 11.11.1971 Vide Notification No. 5246/- XXXVI-S-W-32-(P) 67, dated 23.11.1971

It is evident from the above notifications that there is no application of the said Act in District Pithoragarh. It is not

disputed that district Pithoragarh was carved out in the year 1960 whereas the State Government issued notification on 20.06.1962. The notification was made applicable to district Almora, Nainital, Tehri, Garhwal, Dehradun and other districts which now belonged to U.P. District Pithoragarh was not notified in the said notification. Thus it is evident from the perusal of the notifications itself that the said Act was not applicable in district Pithoragarh, as such, the provisions of the said Act were not applicable in district Pithoragarh.

23. It was further contended that the Juvenile Justice Act, 1986 (hereinafter referred as Act, 1986), was enacted by the Central Government and it was made applicable to the entire State. It was further contended that the appellant is entitled to get the benefit of Act, 1986. Learned A.G.A. refuted the contention. The Act, 1986 was holding the filed till it was elapsed by the emergence of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred as Act, 2000) w.e.f. 01.04.2001. Therefore, the Act, 1986 has been repealed by the Act, 2000. It was provided under Sub-section (2) of Section 69 of Act, 2000 that Sub-section (2) postulates that anything done or any action taken under the Act, 1986 shall be deemed to have been done or taken under the corresponding provisions of the Act, 2000. Section 2(h) of the Act, 1986 defines juvenile as under:-

“2. (h) ‘Juvenile’ means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years;”

Section 2(k) of the Act, 2000 defines the juvenile as under:-

“2. (k) ‘Juvenile’ or ‘child’ means a person who has not completed eighteen year of age;”

24. In the case in hand, the incident took place on 21.05.1981 and the learned Sessions Judge on 24.03.1983 convicted the accused when the Act, 1986 was not in force. The learned Sessions Judge concluded that the accused/appellant was below 16 years at the time of offence, i.e. 21/22.05.1981, as such, he would be completing 18 years on 10.07.1983. Thus, it is apparent from the record that when the Act, 1986 came into force, the accused/appellant was not juvenile at the time of the enforcement of the said Act. Thus the Act, 1986 was not enforce when the judgment was delivered by the trial court. The act, 1986 was repealed by the Act, 2000. The Act, 1986 is also not applicable when we are hearing the appeal. Thus, the appellant cannot get any benefit of the Act, 1986. It is also pertinent to mention here that the accused/appellant was not juvenile on the date when the Act, 1986 came into force. As such, he was not entitled to get the benefit of the Act, 2000. A special provision in respect of pending cases at the time of the enforcement of the Act, 2000 was provided under Section 20 of the said Act which reads as follow:-

“20. *Special provision in respect of pending cases.*- Notwithstanding anything contained in this Act, all proceedings in respect of juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had

been satisfied on inquiry under this Act that a juvenile has committed the offence.”

This distinguishing feature in between the Act, 2000 and the Act, 1986 is with regard to the definition of the juvenile as pointed out earlier. Section 20 of the Act, 2000 does not provide that the said benefit would be given in the appeal also. The benefit which has been provided under Section 20 of the Act, 2000 in respect of juvenile pending in any court referred to in Section 20 of the Act, 2000 are relatable to proceeding initiated before the Act, 2000 came into force and which are pending when the Act, 2000 came into force. The Apex Court in the case of **Pratap Singh Vs. State of Jharkhand and Another** reported in **2005 SCC (Cri) 742** has held in para 34, 35, 36 & 37 as under:-

“34. This rule also indicates that the intention of the legislature was that the provisions of the 2000 Act were to apply to pending cases provided, on 1-4-2001 i.e. the date on which the 2000 Act came into force, the person was a “Juvenile” within the meaning of the term as defined in the 2000 Act i.e. he/she had not crossed 18 years of age.

*35. Mr Mishra referred to the decision of the two-Judge Bench of this Court in **Upendra Kumar v. State of Bihar, 2005 SCC (Cri) 778** wherein this Court referred to the earlier decisions of this Court rendered in **Bhola Bhagat v. State of Bihar 1998 SCC (Cri) 125, Gopinath Ghosh v. State of W.B. 1984 SCC (Cri) 478, Bhoop Ram v. State of U.P. 1989 SCC (Cri) 486 and Pradeep Kumar v. State of U.P. 1995 SCC (Cri) 395** where this Court came to the conclusion that*

the accused who were juveniles could not be denied the benefit of the provisions of the Act then in force.

36. We, therefore, hold that the provisions of the 2000 Act would be applicable to those cases initiated and pending trial/inquiry for the offence committed under the 1986 Act provided that the person had not completed 18 years of age as on 1-4-2001

37. The net result is:

(a) The reckoning date for the determination of the age of the juvenile is the date of the offence and not the date when he is produced before the authority or in the court.

(b) The 2000 Act would be applicable in a pending proceeding in any court/authority initiated under the 1986 Act and is pending when the 2000 Act came into force and the person had not completed 18 years of age as on 1-4-2001."

Thus, it is evident from the above dictum of the Hon'ble Apex Court that the accused/appellant would not get the benefit of the Act, 2000 because he was not juvenile at the time of enforcement of the Act, 2000 also.

25. In view of the aforesaid reasons, we hold that the prosecution has established the guilt beyond reasonable doubt against the accused-appellant. We find that the learned trial court has rightly convicted and sentenced the accused-appellant and there is no infirmity in the impugned judgment and order passed by the learned trial court in Sessions Trial No. 1 of 1982. The accused-appellant Madan Ram is liable to be convicted and sentenced u/s 302 read with 34 I.P.C.

Hence, the appeal is liable to be dismissed and is hereby dismissed.

26. Let the lower court record be sent back to the court concerned for compliance. Compliance report be submitted within three months from the date of receipt of order.

(J.C.S. Rawat, J.) (Rajeev Gupta, C.J.)

Dated 4th September, 2007
Shiv